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**INSURANCE BENEFICIARY CHANGES**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jim Bird**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

**General Description:**

This bill requires a life insurance or annuity policyholder to change a beneficiary according to the insurer's requirements after a divorce or annulment.

**Highlighted Provisions:**

This bill:

- ▶ exempts life insurance policies and annuity contracts from the operation of Section 75-2-804;
- ▶ requires a policyholder or contract holder to follow the insurer's requirements for changing beneficiaries after a divorce;
- ▶ requires a judge in a divorce to ask parties about insurance or annuities; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 30-3-5**, as last amended by Laws of Utah 2010, Chapter 285
  - 31A-22-413**, as last amended by Laws of Utah 2006, Chapter 62
  - 75-2-804**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
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*Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **30-3-5** is amended to read:

31 **30-3-5. Disposition of property -- Maintenance and health care of parties and**  
32 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**  
33 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

34 (1) When a decree of divorce is rendered, the court may include in it equitable orders  
35 relating to the children, property, debts or obligations, and parties. The court shall include the  
36 following in every decree of divorce:

37 (a) an order assigning responsibility for the payment of reasonable and necessary  
38 medical and dental expenses of the dependent children including responsibility for health  
39 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

40 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the  
41 purchase and maintenance of appropriate health, hospital, and dental care insurance for the  
42 dependent children; and

43 (ii) a designation of which health, hospital, or dental insurance plan is primary and  
44 which health, hospital, or dental insurance plan is secondary in accordance with the provisions  
45 of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both  
46 parents' health, hospital, or dental insurance plans;

47 (c) pursuant to Section 15-4-6.5:

48 (i) an order specifying which party is responsible for the payment of joint debts,  
49 obligations, or liabilities of the parties contracted or incurred during marriage;

50 (ii) an order requiring the parties to notify respective creditors or obligees, regarding  
51 the court's division of debts, obligations, or liabilities and regarding the parties' separate,  
52 current addresses; and

53 (iii) provisions for the enforcement of these orders; [~~and~~]

54 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,  
55 Recovery Services[-]; and

56 (e) if either party owns a life insurance policy or an annuity contract, an  
57 acknowledgment by the court that the owner:

58           (i) has reviewed and updated, where appropriate, the list of beneficiaries;  
59           (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries  
60 after the divorce becomes final; and  
61           (iii) understands that if no changes are made to the policy or contract, the beneficiaries  
62 currently listed will receive any funds paid by the insurance company under the terms of the  
63 policy or contract.

64           (2) The court may include, in an order determining child support, an order assigning  
65 financial responsibility for all or a portion of child care expenses incurred on behalf of the  
66 dependent children, necessitated by the employment or training of the custodial parent. If the  
67 court determines that the circumstances are appropriate and that the dependent children would  
68 be adequately cared for, it may include an order allowing the noncustodial parent to provide  
69 child care for the dependent children, necessitated by the employment or training of the  
70 custodial parent.

71           (3) The court has continuing jurisdiction to make subsequent changes or new orders for  
72 the custody of the children and their support, maintenance, health, and dental care, and for  
73 distribution of the property and obligations for debts as is reasonable and necessary.

74           (4) Child support, custody, visitation, and other matters related to children born to the  
75 mother and father after entry of the decree of divorce may be added to the decree by  
76 modification.

77           (5) (a) In determining parent-time rights of parents and visitation rights of grandparents  
78 and other members of the immediate family, the court shall consider the best interest of the  
79 child.

80           (b) Upon a specific finding by the court of the need for peace officer enforcement, the  
81 court may include in an order establishing a parent-time or visitation schedule a provision,  
82 among other things, authorizing any peace officer to enforce a court-ordered parent-time or  
83 visitation schedule entered under this chapter.

84           (6) If a petition for modification of child custody or parent-time provisions of a court  
85 order is made and denied, the court shall order the petitioner to pay the reasonable attorneys'

86 fees expended by the prevailing party in that action, if the court determines that the petition  
87 was without merit and not asserted or defended against in good faith.

88 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a  
89 visitation order by a grandparent or other member of the immediate family where a visitation or  
90 parent-time right has been previously granted by the court, the court may award to the  
91 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing  
92 party because of the other party's failure to provide or exercise court-ordered visitation or  
93 parent-time.

94 (8) (a) The court shall consider at least the following factors in determining alimony:

95 (i) the financial condition and needs of the recipient spouse;

96 (ii) the recipient's earning capacity or ability to produce income;

97 (iii) the ability of the payor spouse to provide support;

98 (iv) the length of the marriage;

99 (v) whether the recipient spouse has custody of minor children requiring support;

100 (vi) whether the recipient spouse worked in a business owned or operated by the payor  
101 spouse; and

102 (vii) whether the recipient spouse directly contributed to any increase in the payor  
103 spouse's skill by paying for education received by the payor spouse or allowing the payor  
104 spouse to attend school during the marriage.

105 (b) The court may consider the fault of the parties in determining alimony.

106 (c) As a general rule, the court should look to the standard of living, existing at the  
107 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the  
108 court shall consider all relevant facts and equitable principles and may, in its discretion, base  
109 alimony on the standard of living that existed at the time of trial. In marriages of short  
110 duration, when no children have been conceived or born during the marriage, the court may  
111 consider the standard of living that existed at the time of the marriage.

112 (d) The court may, under appropriate circumstances, attempt to equalize the parties'  
113 respective standards of living.

114 (e) When a marriage of long duration dissolves on the threshold of a major change in  
115 the income of one of the spouses due to the collective efforts of both, that change shall be  
116 considered in dividing the marital property and in determining the amount of alimony. If one  
117 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during  
118 the marriage, the court may make a compensating adjustment in dividing the marital property  
119 and awarding alimony.

120 (f) In determining alimony when a marriage of short duration dissolves, and no  
121 children have been conceived or born during the marriage, the court may consider restoring  
122 each party to the condition which existed at the time of the marriage.

123 (g) (i) The court has continuing jurisdiction to make substantive changes and new  
124 orders regarding alimony based on a substantial material change in circumstances not  
125 foreseeable at the time of the divorce.

126 (ii) The court may not modify alimony or issue a new order for alimony to address  
127 needs of the recipient that did not exist at the time the decree was entered, unless the court  
128 finds extenuating circumstances that justify that action.

129 (iii) In determining alimony, the income of any subsequent spouse of the payor may not  
130 be considered, except as provided in this Subsection (8).

131 (A) The court may consider the subsequent spouse's financial ability to share living  
132 expenses.

133 (B) The court may consider the income of a subsequent spouse if the court finds that  
134 the payor's improper conduct justifies that consideration.

135 (h) Alimony may not be ordered for a duration longer than the number of years that the  
136 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating  
137 circumstances that justify the payment of alimony for a longer period of time.

138 (9) Unless a decree of divorce specifically provides otherwise, any order of the court  
139 that a party pay alimony to a former spouse automatically terminates upon the remarriage or  
140 death of that former spouse. However, if the remarriage is annulled and found to be void ab  
141 initio, payment of alimony shall resume if the party paying alimony is made a party to the

142 action of annulment and his rights are determined.

143 (10) Any order of the court that a party pay alimony to a former spouse terminates  
144 upon establishment by the party paying alimony that the former spouse is cohabitating with  
145 another person.

146 Section 2. Section **31A-22-413** is amended to read:

147 **31A-22-413. Designation of beneficiary.**

148 (1) Subject to Subsection 31A-22-412(2), no life insurance policy or annuity contract  
149 may restrict the right of a policyholder or certificate holder:

150 (a) to make an irrevocable designation of beneficiary effective immediately or at some  
151 subsequent time; or

152 (b) if the designation of beneficiary is not explicitly irrevocable, to change the  
153 beneficiary without the consent of the previously designated beneficiary. Subsection  
154 75-6-201(1)(c) applies to designations by will or by separate writing.

155 (2) (a) An insurer may prescribe formalities to be complied with for the change of  
156 beneficiaries, but those formalities may only be designed for the protection of the insurer.  
157 ~~[The]~~ Notwithstanding Section 75-2-804, the insurer discharges its obligation under the  
158 insurance policy or certificate of insurance if it pays the properly designated beneficiary unless  
159 it has actual notice of either an assignment or a change in beneficiary designation made  
160 pursuant to Subsection (1)(b) ~~[or Section 75-2-804]~~.

161 (b) The insurer has actual notice if the formalities prescribed by the policy are  
162 complied with, or if the change in beneficiary has been requested in the form prescribed by the  
163 insurer and delivered to an agent representing the insurer at least three days prior to payment to  
164 the earlier properly designated beneficiary.

165 Section 3. Section **75-2-804** is amended to read:

166 **75-2-804. Definitions -- Revocation of probate and nonprobate transfers by**  
167 **divorce -- Effect of severance -- Revival -- Protection of payors, third parties, and bona**  
168 **fade purchasers -- Personal liability of recipient -- No revocation by other changes of**  
169 **circumstances -- No revocation of life insurance beneficiary.**

170 (1) As used in this section:

171 (a) "Disposition or appointment of property" includes a transfer of an item of property  
172 or any other benefit to a beneficiary designated in a governing instrument.

173 (b) "Divorce or annulment" means any divorce or annulment, or any dissolution or  
174 declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse  
175 within the meaning of Section 75-2-802. A decree of separation that does not terminate the  
176 status of husband and wife is not a divorce for purposes of this section.

177 (c) "Divorced individual" includes an individual whose marriage has been annulled.

178 (d) "Governing instrument" means a governing instrument executed by the divorced  
179 individual before the divorce or annulment of [~~his~~] the individual's marriage to [~~his~~] the  
180 individual's former spouse.

181 (e) "Relative of the divorced individual's former spouse" means an individual who is  
182 related to the divorced individual's former spouse by blood, adoption, or affinity and who, after  
183 the divorce or annulment, is not related to the divorced individual by blood, adoption, or  
184 affinity.

185 (f) "Revocable," with respect to a disposition, appointment, provision, or nomination,  
186 means one under which the divorced individual, at the time of the divorce or annulment, was  
187 alone empowered, by law or under the governing instrument, to cancel the designation in favor  
188 of [~~his~~] the individual's former spouse or former spouse's relative, whether or not the divorced  
189 individual was then empowered to designate [~~himself~~] another in place of [~~his~~] the individual's  
190 former spouse or in place of [~~his~~] the individual's former spouse's relative and whether or not  
191 the divorced individual then had the capacity to exercise the power.

192 (2) Except as provided by the express terms of a governing instrument, a court order,  
193 or a contract relating to the division of the marital estate made between the divorced  
194 individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a  
195 marriage:

196 (a) revokes any revocable:

197 (i) disposition or appointment of property made by a divorced individual to [~~his~~] the

198 individual's former spouse in a governing instrument and any disposition or appointment  
199 created by law or in a governing instrument to a relative of the divorced individual's former  
200 spouse;

201 (ii) provision in a governing instrument conferring a general or nongeneral power of  
202 appointment on the divorced individual's former spouse or on a relative of the divorced  
203 individual's former spouse; and

204 (iii) nomination in a governing instrument, [~~nominating~~] which nominates a divorced  
205 individual's former spouse or a relative of the divorced individual's former spouse to serve in  
206 any fiduciary or representative capacity, including a personal representative, executor, trustee,  
207 conservator, agent, or guardian; and

208 (b) severs the interests of the former spouses in property held by them at the time of the  
209 divorce or annulment as joint tenants with the right of survivorship, transforming the interests  
210 of the former spouses into tenancies in common.

211 (3) A severance under Subsection (2)(b) does not affect any third-party interest in  
212 property acquired for value and in good faith reliance on an apparent title by survivorship in the  
213 survivor of the former spouses unless a writing declaring the severance has been noted,  
214 registered, filed, or recorded in records appropriate to the kind and location of the property,  
215 which are relied upon, in the ordinary course of transactions involving such property, as  
216 evidence of ownership.

217 (4) Provisions of a governing instrument are given effect as if the former spouse and  
218 relatives of the former spouse disclaimed all provisions revoked by this section or, in the case  
219 of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and  
220 relatives of the former spouse died immediately before the divorce or annulment.

221 (5) Provisions revoked solely by this section are revived by the divorced individual's  
222 remarriage to the former spouse or by a nullification of the divorce or annulment.

223 (6) No change of circumstances other than as described in this section and in Section  
224 75-2-803 effects a revocation.

225 (7) (a) A payor or other third party is not liable for having made a payment or

226 transferred an item of property or any other benefit to a beneficiary designated in a governing  
227 instrument affected by a divorce, annulment, or remarriage, or for having taken any other  
228 action in good faith reliance on the validity of the governing instrument, before the payor or  
229 other third party received written notice of the divorce, annulment, or remarriage. A payor or  
230 other third party is liable for a payment made or other action taken after the payor or other third  
231 party received written notice of a claimed forfeiture or revocation under this section.

232 (b) Written notice of the divorce, annulment, or remarriage under Subsection (7)(a)  
233 shall be mailed to the payor's or other third party's main office or home by registered or  
234 certified mail, return receipt requested, or served upon the payor or other third party in the  
235 same manner as a summons in a civil action. Upon receipt of written notice of the divorce,  
236 annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or  
237 deposit any item of property held by it to or with the court having jurisdiction of the probate  
238 proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or  
239 with the court having jurisdiction of probate proceedings relating to the decedent's estates  
240 located in the county of the decedent's residence. The court shall hold the funds or item of  
241 property and, upon its determination under this section, shall order disbursement or transfer in  
242 accordance with the determination. Payments, transfers, or deposits made to or with the court  
243 discharge the payor or other third party from all claims for the value of amounts paid to or  
244 items of property transferred to or deposited with the court.

245 (8) (a) A person who purchases property from a former spouse, relative of a former  
246 spouse, or any other person for value and without notice, or who receives from a former  
247 spouse, relative of a former spouse, or any other person a payment or other item of property in  
248 partial or full satisfaction of a legally enforceable obligation, is neither obligated under this  
249 section to return the payment, item of property, or benefit, nor is liable under this section for  
250 the amount of the payment or the value of the item of property or benefit. But a former spouse,  
251 relative of a former spouse, or other person who, not for value, received a payment, item of  
252 property, or any other benefit to which that person is not entitled under this section is obligated  
253 to return the payment, item of property, or benefit, or is personally liable for the amount of the

254 payment or the value of the item of property or benefit, to the person who is entitled to it under  
255 this section.

256 (b) If this section or any part of this section is preempted by federal law with respect to  
257 a payment, an item of property, or any other benefit covered by this section, a former spouse,  
258 relative of the former spouse, or any other person who, not for value, received a payment, item  
259 of property, or any other benefit to which that person is not entitled under this section is  
260 obligated to return that payment, item of property, or benefit, or is personally liable for the  
261 amount of the payment or the value of the item of property or benefit, to the person who would  
262 have been entitled to it were this section or part of this section not preempted.